

No. 490, N.Y. 10.

EVENING POST JOB PRINTING HOUSE—N.Y.

Motion Papers for Appellee  
Filed Nov. 16, 1896.

Supreme Court of the United States, 1

October Term, 1896.

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AMERICAN SUGAR REFINING COMPANY,  
Libelant-Appellant,

vs.

The Steamship "G. R. BOOTH,"  
WILLIAM H. SAVILLE,  
Claimant-Appellee.

No. 490.

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NOTICE OF MOTION.

Please take notice that the annexed motion for the advancement and submission of the certificate herein, sent up to this Court by the Circuit Court of Appeals, for the Second Circuit, will be presented at the opening of the Court, at the Capitol, in the City of Washington, on November 16, 1896.

New York, November 2, 1896.

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CONVERS & KIRLIN,

Proctors for Appellee.

To COWEN, WING, PUTNAM & BURLINGHAM, Esqs.,  
Proctors for Appellant.

## 4 SUPREME COURT OF THE UNITED STATES,

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## MOTION TO ADVANCE AND SUBMIT CERTIFICATE.

Comes now the appellee, William Henry Saville, by J. Parker Kirlin, his counsel, and moves this Honorable Court that the certificate herein sent up to this Court by the Circuit Court of Appeals for the Second Circuit be advanced and submitted as under Rule 32.

New York, November 2, 1896.

WILLIAM H. SAVILLE,  
by J. PARKER KIRLIN,  
Counsel.

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## SUPREME COURT OF THE UNITED STATES, 7

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MEMORANDUM IN SUPPORT OF MOTION TO ADVANCE  
AND SUBMIT.

The certificate sent up by the Circuit Court of Appeals herein was filed during the October Term, 1895, and stands on the present docket as No. 490.

The statement of facts by the Circuit Court of Appeals affirms the findings of fact made by Judge Brown, in the District Court (*G. R. Booth*, 64 Fed. Rep., 878), to the effect that the loss for which recovery was here sought occurred from pure accident, without any contributing fault on the part of the steamer, or any person for whose acts she was responsible.

The only point for the consideration of this Court, under the certificate, is one of law, namely, whether the steamship, notwithstanding her freedom from all fault, is still liable for the loss under her obligations as a common carrier, or whether the loss falls within a stated exception in the bill of lading. The fact was that sea water entered the appellee's steamship, through a hole in her side, made by an accidental explosion, and, flowing forward into an adjacent compartment, damaged the appellant's sugar. No damage to the sugar was caused by the

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10 explosion—only damage to the ship. The District Court, following the *Xantho*, 12 Appeal Cases, 503, held that damage thus caused by sea water was a sea peril loss within the exception of "loss or damage occasioned by perils of the sea or other waters, or other accidents of navigation of whatsoever kind," contained in the bill of lading under which the sugar was carried; and finding the ship free from fault for the explosion, gave the steamship the benefit of the exception.

The Court of Appeals affirms the findings of fact of the District Court, and asks the instruction of this Court on the question "whether the damage to libelant's sugar caused by the seawater which entered the ship through the hole made in her side by the explosion, without her fault, is a 'loss or damage occasioned by perils of the sea or other waters,' or by 'an accident of navigation of whatsoever kind.' within the above mentioned exceptions in the bill of lading."

It is desirable that the Court of Appeals should have this Court's early answer to the question propounded, not only for its guidance in the decision of this cause, but also for the determination of other cases of like nature, involving the correctness of the principle laid down in the House of Lords case above referred to.

12 The appellee therefore respectfully asks that the certificate be advanced for submission, upon printed briefs, as under Rule 32.

New York, November 12, 1896.

J. PARKER KIRLIN,  
Of Counsel for Appellee.

No. 490. No. 10.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896.

THE AMERICAN SUGAR REFINING  
COMPANY,  
Libellant-Appellant,  
vs.  
The Steamship G. R. Booth,  
WILLIAM H. SAVILLE,  
Claimant-Appellee.

No. 490.

MEMORANDUM IN OPPOSITION TO MOTION TO  
ADVANCE AND SUBMIT THE CAUSE.

The libellant, having applied for *certiorari* to remove the whole cause into this Court, has received notice of a counter application by the claimant to advance and submit the question certified.

The libellant opposes this application to submit the cause upon certificate, upon the ground of the pendency of the motion for *certiorari*; and because the question certified (even if it shall be considered alone) is of an importance that makes full oral argument desirable.

HARRINGTON PUTNAM  
Advocate for Libellant.